

## **Kansas V. Nebraska and Colorado**

### **No. 126, Original**

#### **Chronology**

**June 30, 2003**

- 1943 Kansas, Nebraska and Colorado enter into the Republican River Compact, equitably dividing the waters of the Republican River basin among the three states. K.S.A. 82a-518 (copy attached).
- 5-26-98 Attorney General Carla Stovall files *Kansas v. Nebraska and Colorado*, No. 126, Original, in the U.S. Supreme Court to enforce Republican River Compact terms. The Kansas Legislature supported this lawsuit on behalf Kansas. House Concurrent Resolution No. 5030 (copy attached).
- 1-19-99 The Supreme Court grants Kansas' Motion for Leave to File a Bill of Complaint
- 8-2-99 Nebraska files a motion to dismiss the case on the grounds that the Republican River Compact does not apportion groundwater in the basin, only surface water.
- 1-28-00 In his First Report, Special Master Vincent McKusick recommends that the U.S. Supreme Court deny Nebraska's Motion to Dismiss because groundwater use, to the extent it depletes surface flows, is regulated by the Republican River Compact.
- 6-29-00 The Supreme Court, without oral argument, denies Nebraska's Motion to Dismiss and recommits the matter to Special Master McKusick.
- 10-01 Settlement talks begin among the states and the United States
- 12-10-01 The states' motion to stay the litigation to allow them to pursue settlement is granted by the special master and formal mediated settlement talks begin. CDR Associates from Boulder, Colorado, is selected to mediate.
- 5-8-02 The states' motion for a further stay in the litigation is granted until December 15, 2002.
- 5-29-02 Work of the Republican River Compact Administration groundwater modeling committee begins.
- 12-16-02 After roughly 14 months negotiating, including about 45 days negotiating by the full settlement team, a Final Settlement Stipulation is signed by the governors and attorneys general of all three states and filed with the special master. The final settlement agreement fills five printed volumes.
- 1-6-03 A hearing is held in Denver, Colorado, for the three states and the United States to explain the settlement to Special Master McKusick.

- 4-15-03 The special master sends his Second Report to the U.S. Supreme Court, recommending without reservation that they approve the settlement.
- 5-19-03 The Supreme Court approves the settlement reached December 16, 2002, and dismisses the case with prejudice “effective upon the filing by the special master of a final report certifying adoption of the Republican River Compact Administration groundwater model by the state parties.”
- 6-30-03 The states adopt the Republican River Compact Administration groundwater model and transmit the model, along with documentation that it has been adopted by the states, to the special master.
- est. 7-03 The special master will certify to the U.S. Supreme Court that the Republican River Compact Administration groundwater model has been adopted by the states.
- 7-03/8-20-03 The states will prepare for the Republican River Compact Administration annual meeting. Documents must be prepared to amend the rules and regulations in a manner consistent with the settlement, to adopt the accounting procedures and to adopt the Republican River Compact Administration groundwater model.
- 8-21/22-03 The Republican River Compact Administration annual meeting will be held to begin implementing the final settlement, including adopting the Republican River Compact Administration groundwater model and the accounting procedures, and to amend the rules and regulations.
- 12-31-03 States must complete data updates to the Republican River Compact Administration groundwater model for the years 2001-2002.
- Ongoing Each year, the states will exchange data, update the groundwater model and complete the accounting to verify compact compliance.
- 12-31-04 Each state must complete its inventory of nonfederal reservoirs.
- Ongoing The states and the United States will continue the two studies agreed to in the settlement. One study involves the impact of nonfederal reservoirs (primarily farm ponds) and terraces on stream flow in the basin. The other study will look at possible system improvements in the basin below Hardy, Nebraska, to improve the ability to use water.
- No deadline Kansas and Nebraska will work with the United States to minimize bypass of flows at the diversion dam near Guide Rock, Nebraska.

**K.S.A. 82a-518. Ratification by legislature; text and map.** The legislature hereby ratifies the compact, designated as the "**Republican river compact**," between the states of Colorado, Kansas, and Nebraska, signed in the city of Lincoln, state of Nebraska, on the thirty-first of December, A.D. 1942, by M. C. Hinderlider, as commissioner for the state of Colorado, by George S. Knapp, as commissioner for the state of Kansas, and by Wardner G. Scott, as commissioner for the state of Nebraska, and also signed by Glenn L. Parker, as representative of the United States, which said compact is as follows:

## REPUBLICAN RIVER COMPACT

The States of Colorado, Kansas, and Nebraska, parties signatory to this compact (hereinafter referred to as Colorado, Kansas, and Nebraska, respectively, or individually as a State, or collectively as the States), having resolved to conclude a compact with respect to the waters of the Republican River Basin, and being duly authorized therefor by the Act of the Congress of the United States of America, approved August 4, 1942, (Public No. 696, 77th Congress, Chapter 545, 2nd Session) and pursuant to Acts of their respective Legislatures have, through their respective Governors, appointed as their Commissioners:

M. C. Hinderlider, for Colorado George S. Knapp, for Kansas Wardner G. Scott, for Nebraska who, after negotiations participated in by Glenn L. Parker, appointed by the President as the Representative of the United States of America, have agreed upon the following articles:

### Article I

The major purposes of this compact are to provide for the most efficient use of the waters of the Republican River Basin (hereinafter referred to as the "Basin") for multiple purposes; to provide for an equitable division of such waters; to remove all causes, present and future, which might lead to controversies; to promote interstate comity; to recognize that the most efficient utilization of the waters within the Basin is for beneficial consumptive use; and to promote joint action by the States and the United States in the efficient use of water and the control of destructive floods.

The physical and other conditions peculiar to the Basin constitute the basis for this compact, and none of the States hereby, nor the Congress of the United States by its consent, concedes that this compact establishes any general principle or precedent with respect to any other interstate stream.

### Article II

The Basin is all the area in Colorado, Kansas, and Nebraska, which is naturally drained by the Republican River, and its tributaries, to its junction with the Smoky Hill River in Kansas. The main stem of the Republican River extends from the junction near Haigler, Nebraska, of its North Fork and the Arikaree River, to its junction with Smoky Hill River near Junction City, Kansas. Frenchman Creek (River) in Nebraska is a continuation of Frenchman Creek (River) in Colorado. Red Willow Creek in Colorado is not identical with the stream having the same name

in Nebraska. A map of the Basin approved by the Commissioners is attached and made a part hereof.

The term "Acre-foot," as herein used, is the quantity of water required to cover an acre to the depth of one foot and is equivalent to forty-three thousand, five hundred sixty (43,560) cubic feet.

The term "Virgin Water Supply," as herein used, is defined to be the water supply within the Basin undepleted by the activities of man.

The term "Beneficial Consumptive Use" is herein defined to be that use by which the water supply of the Basin is consumed through the activities of man, and shall include water consumed by evaporation from any reservoir, canal, ditch, or irrigated area.

Beneficial consumptive use is the basis and principle upon which the allocations of water hereinafter made are predicated.

### Article III

The specific allocations in acre-feet hereinafter made to each State are derived from the computed average annual virgin water supply originating in the following designated drainage basins, or parts thereof, in the amounts shown:

North Fork of the Republican River drainage basin in Colorado, 44,700 acre-feet;

Arikaree River drainage basin, 19,610 acre-feet;

Buffalo Creek drainage basin, 7,890 acre-feet;

Rock Creek drainage basin, 11,000 acre-feet;

South Fork of the Republican River drainage basin, 57,200 acre-feet;

Frenchman Creek (River) drainage basin in Nebraska, 98,500 acre-feet;

Blackwood Creek drainage basin, 6,800 acre-feet;

Driftwood Creek drainage basin, 7,300 acre-feet;

Red Willow Creek drainage basin in Nebraska, 21,900 acre-feet;

Medicine Creek drainage basin, 50,800 acre-feet;

Beaver Creek drainage basin, 16,500 acre-feet;

Sappa Creek drainage basin, 21,400 acre-feet;

Prairie Dog Creek drainage basin, 27,600 acre-feet;

The North Fork of the Republican River in Nebraska and the main stem of the Republican River between the junction of the North Fork and Arikaree River and the lowest crossing of the river at the Nebraska-Kansas state line and the small tributaries thereof, 87,700 acre-feet.

Should the future computed virgin water supply of any source vary more than the (10) percent from the virgin water supply as hereinabove set forth, the allocations hereinafter made from such source shall be increased or decreased in the relative proportions that the future computed virgin water supply of such source bears to the computed virgin water supply used herein.

#### Article IV

There is hereby allocated for beneficial consumptive use in Colorado, annually, a total of fifty-four thousand, one hundred (54,100) acre-feet of water. This total is to be derived from the sources and in the amounts hereinafter specified and is subject to such quantities being physically available from those sources:

North Fork of the Republican River drainage basin, 10,000 acre-feet;

Arikaree River drainage basin, 15,400 acre-feet;

South Fork of the Republican River drainage basin, 25,400 acre-feet;

Beaver Creek drainage basin, 3,300 acre-feet; and

In addition, for beneficial consumptive use in Colorado, annually, the entire water supply of the Frenchman Creek (River) drainage basin in Colorado and of the Red Willow Creek drainage basin in Colorado.

There is hereby allocated for beneficial consumptive use in Kansas, annually, a total of one hundred ninety thousand, three hundred (190,300) acre-feet of water. This total is to be derived from the sources and in the amounts hereinafter specified and is subject to such quantities being physically available from those sources:

Arikaree River drainage basin, 1,000 acre-feet;

South Fork of the Republican River drainage basin, 23,000 acre-feet;

Driftwood Creek drainage basin, 500 acre-feet;

Beaver Creek drainage basin, 6,400 acre-feet;

Sappa Creek drainage basin, 8,800 acre-feet;

Prairie Dog Creek drainage basin, 12,600 acre-feet;

From the main stem of the Republican River upstream from the lowest crossing of the river at the Nebraska-Kansas state line and from water supplies of upstream basins

otherwise unallocated herein, 138,000 acre-feet; provided, that Kansas shall have the right to divert all or any portion thereof at or near Guide Rock, Nebraska; and

In addition there is hereby allocated for beneficial consumptive use in Kansas, annually, the entire water supply originating in the Basin downstream from the lowest crossing of the river at the Nebraska-Kansas state line.

There is hereby allocated for beneficial consumptive use in Nebraska, annually, a total of two hundred thirty-four thousand, five hundred (234,500) acre-feet of water. This total is to be derived from the sources and in the amounts hereinafter specified and is subject to such quantities being physically available from those sources:

North Fork of the Republican River drainage basin in Colorado, 11,000 acre-feet;

Frenchman Creek (River) drainage basin in Nebraska, 52,800 acre-feet;

Rock Creek drainage basin, 4,400 acre-feet;

Arikaree River drainage basin, 3,300 acre-feet;

Buffalo Creek drainage basin, 2,600 acre-feet;

South Fork of the Republican River drainage basin, 800 acre-feet;

Driftwood Creek drainage basin, 1,200 acre-feet;

Red Willow Creek drainage basin in Nebraska, 4,200 acre-feet;

Medicine Creek drainage basin, 4,600 acre-feet;

Beaver Creek drainage basin, 6,700 acre-feet;

Sappa Creek drainage basin, 8,800 acre-feet;

Prairie Dog Creek drainage basin, 2,100 acre-feet;

From the North Fork of the Republican River in Nebraska, the main stem of the Republican River between the junction of the North Fork and Arikaree River and the lowest crossing of the river at the Nebraska-Kansas state line, from the small tributaries thereof, and from water supplies of up-stream basins otherwise unallocated herein, 132,000 acre-feet. The use of the waters hereinabove allocated shall be subject to the laws of the State, for use in which the allocations are made.

#### Article V

The judgment and all provisions thereof in the case of Adelbert A. Weiland, as State Engineer of Colorado, et al., v. The Pioneer Irrigation Company, decided June 5, 1922, and reported in 259 U.S. 498, affecting the Pioneer Irrigation ditch or canal, are hereby recognized as binding upon the States; and Colorado, through its duly authorized officials, shall have the perpetual and

exclusive rights to control and regulate diversions of water at all times by said canal in conformity with said judgment.

The water heretofore adjudicated to said Pioneer Canal by the District Court of Colorado, in the amount of fifty (50) cubic feet per second of time is included in and is a part of the total amounts of water hereinbefore allocated for beneficial consumptive use in Colorado and Nebraska.

#### Article VI

The right of any person, entity, or lower State to construct, or participate in the future construction and use of any storage reservoir or diversion works in an upper State for the purpose of regulating water herein allocated for beneficial consumptive use in such lower State, shall never be denied by an upper State; provided, that such right is subject to the rights of the upper State.

#### Article VII

Any person, entity, or lower State shall have the right to acquire necessary property rights in an upper State by purchase, or through the exercise of the power of eminent domain, for the construction, operation and maintenance of storage reservoirs, and of appurtenant works, canals and conduits, required for the enjoyment of the privileges granted by Article VI; provided, however, that the grantees of such rights shall pay to the political subdivisions of the State in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes assessed against the lands and improvements during the ten years preceding the use of such lands, in reimbursement for the loss of taxes to said political subdivisions of the State.

#### Article VIII

Should any facility be constructed in an upper State under the provisions of Article VI, such construction and the operation of such facility shall be subject to the laws of such upper State.

Any repairs to or replacements of such facility shall also be made in accordance with the laws of such upper State.

#### Article IX

It shall be the duty of the three States to administer this compact through the official in each State who is now or may hereafter be charged with the duty of administering the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact.

The United States Geological Survey, or whatever federal agency may succeed to the functions and duties of that agency, insofar as this compact is concerned, shall collaborate with the officials of the States charged with the administration of this compact in the execution of the duty of such

officials in the collection, correlation, and publication of water facts necessary for the proper administration of this compact.

#### Article X

Nothing in this compact shall be deemed:

(a) To impair or affect any rights, powers or jurisdiction of the United States, or those acting by or under its authority, in, over, and to the waters of the Basin; nor to impair or affect the capacity of the United States, or those acting by or under its authority, to acquire rights in and to the use of waters of the Basin;

(b) To subject any property of the United States, its agencies or instrumentalities, to taxation by any State, or subdivision thereof, nor to create an obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any State or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

(c) To subject any property of the United States, its agencies or instrumentalities, to the laws of any State to any extent other than the extent these laws would apply without regard to this compact.

#### Article XI

This compact shall become operative when ratified by the Legislature of each of the States, and when consented to by the Congress of the United States by legislation providing, among other things that:

(a) Any beneficial consumptive uses by the United States, or those acting by or under its authority, within a state, of the waters allocated by this compact, shall be made within the allocations hereinabove made for use in that State and shall be taken into account in determining the extent of use within that State.

(b) The United States, or those acting by or under its authority, in the exercise of rights or powers arising from whatever jurisdiction the United States has in, over, and to the waters of the Basin shall recognize, to the extent consistent with the best utilization of the waters for multiple purposes, that beneficial consumptive use of the waters within the Basin is of paramount importance to the development of the Basin; and no exercise of such power or right thereby that would interfere with the full beneficial consumptive use of the waters within the Basin shall be made except upon a determination, giving due consideration to the objectives of this compact and after consultation with all interested federal agencies and the state officials charged with the administration of this compact, that such exercise is in the interest of the best utilization of such waters for multiple purposes.

(c) The United States, or those acting by or under its authority, will recognize any established use, for domestic and irrigation purposes of the waters allocated by this compact which may be impaired by the exercise of federal jurisdiction in, over, and to such waters; provided, that such use is being exercised beneficially, is valid under the laws of the appropriate State and in conformity with this compact at the time of the impairment thereof, and was validly initiated under state law prior to the initiation or authorization of the federal program or project which causes such impairment.

In Witness Whereof, the Commissioners have signed this compact in quadruplicate original, one of which shall be deposited in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each of the States.

Done in the city of Lincoln, in the State of Nebraska, on the 31st day of December, in the year of our Lord, one thousand nine hundred forty-two.

M. C. Hinderlider Commissioner for Colorado George S. Knapp Commissioner for Kansas  
Wardner G. Scott Commissioner for Nebraska

I have participated in the negotiations leading to this proposed compact and propose to report to the Congress of the United States favorably thereon.

Glenn L. Parker Representative of the United States

**History:** L. 1943, ch. 335, § 1; June 28.

Session of 1998

**House Concurrent Resolution No. 5030**

By Special Committee on Energy and Natural Resources/Environment

A CONCURRENT RESOLUTION requiring the Attorney General to bring suit against the State of Nebraska to enforce the provisions of the Republican River Compact.

WHEREAS, The Republican River is an important supply of water to citizens of the Republican River Basin in Kansas, providing a source of water for irrigation, municipal, industrial, recreational and other uses; and

WHEREAS, The Republican River is also a major tributary of the Kansas River and, therefore, a source of water supply for a substantial portion of the population of this state; and

WHEREAS, Shortages of water in the Republican River Basin in Kansas have a significant adverse economic impact on property values and incomes within the Basin, as well as on the economic welfare of the State as a whole, and reduced stream flow in the Republican River has a potentially negative impact on surface water quality; and

WHEREAS, The Republican River Compact was entered into by the states of Kansas, Nebraska and Colorado to provide for an equitable division of the waters of the Republican River Basin among the compacting states; and

WHEREAS, The loss of water to which Kansas is entitled under the Compact, as a result of the State of Nebraska's overuse, has hindered existing uses of water in Kansas and has discouraged economic development; and

WHEREAS, The State of Nebraska, for a number of years, has admitted consumptive use in excess of its allocations under the Compact; and

WHEREAS, The State of Kansas since at least 1985 has consistently expressed concern regarding the State of Nebraska's escalating overuse of its allocation under the Republican River Compact and the corresponding longer and more frequent shortages to the State of Kansas; and

WHEREAS, The State of Nebraska has increasingly refused to recognize that the use of groundwater in the Republican River Basin is subject to the limitations of the Republican River Compact and has failed to take sufficient regulatory action to fulfill the State of Nebraska's obligations under the Compact, including failure to implement an appropriate HCR 5030 moratorium on the development of new wells and adequate regulation of existing groundwater pumping in the Republican River Basin; and

WHEREAS, The preliminary estimates of depletions caused by the State of Nebraska's failure to

comply with the Republican River Compact appear to be two to four times the amount of violations found by the Special Master appointed by the United States Supreme Court in *Kansas v. Colorado*, No. 105 Original; and

WHEREAS, The State of Kansas has sought the cooperation of the State of Nebraska in resolving the compact dispute through nonjudicial means, including mediation, but to no avail; and

WHEREAS, The State of Nebraska has refused to take any action to comply with the Compact; and

WHEREAS, The State of Nebraska has consistently vetoed any action proposed to the Republican River Compact Administration by the State of Kansas to address Kansas' concerns; and

WHEREAS, The State of Kansas as a last resort must now turn to litigation to enforce its rights under the Republican River Compact: Now, therefore,

*Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein:* That, in accordance with K.S.A. 75-702, the Attorney General of the State of Kansas is hereby required to file and prosecute an action against the State of Nebraska to enforce the provisions of the Republican River Compact, K.S.A. 82a-518.

